



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Maxima Corporation

File: B-234019

Date: April 7, 1989

DIGEST

1. Protest that agency failed to conduct meaningful discussions with offeror is without merit where agency conducted oral discussions with protester and provided protester with detailed questions that informed the protester of areas in its proposal with which the agency was concerned, and the protester was given an opportunity to revise its proposal in response to these questions.

2. Protest that agency failed to obtain full and open competition because only two firms, one of which is the incumbent contractor, submitted proposals is without merit where agency made a good faith effort to obtain competition by publicizing the requirement, and any competitive advantage to the incumbent was not the result of any preferential or unfair action by the government.

DECISION

The Maxima Corporation protests the award of a contract to ORI, Inc., under request for proposals (RFP) No. 89-001, issued by the Department of Education (Education) to operate the Educational Resources Information Center (ERIC) Processing and Reference Facility. The protester alleges that Education failed to conduct meaningful discussions with it concerning its technical approach, and failed to obtain full and open competition.

We deny the protest.

ERIC is a national education information system responsible for developing, maintaining, and providing access to the world's largest education literature database. The ERIC system includes a network of 16 clearinghouses, each of which acquires and reviews documents, and prepares indexes and abstracts. With the assistance of the ERIC facility, the indexed abstracts are entered into the ERIC database.

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The ERIC database is made available to a wide variety of users through microfiche collections and computers with on-line access to the database.

The RFP solicited proposals to obtain support services over a 5-year period on a cost reimbursement basis, including all necessary personnel, equipment, materials, services, and management to operate the ERIC facility. In general, the facility assists the clearinghouses in entering documents in the database, preparing the data for computer processing, and managing the database. Using the ERIC database, the facility publishes a variety of directories, indexes, and compilations for both internal use and public distribution. Members of the facility attend conferences, publish articles on the ERIC system, train clearinghouse personnel in uniform processing procedures, and provide technical assistance to states, foreign nations and organizations to obtain ERIC compatibility with their own information systems.

The RFP states that for award purposes technical quality is more important than cost. The RFP further states that as proposals become more equal in their technical merit, the evaluated cost becomes more important, and if technical merit and evaluated cost become essentially equal, other factors may become determinative. The evaluation factors in the RFP were corporate qualifications (50 points), project management (50 points), technical approach (100 points), and personnel (100 points).

Education synopsized the requirement in the Commerce Business Daily (CBD), posted it on an agency bulletin board, and discussed it with individuals and groups interested in ERIC. Approximately 175 firms requested the RFP. Proposals were received from the protester and ORI, the incumbent contractor. A technical evaluation panel reviewed and evaluated the two proposals. The protester's technical proposal received an average of 258.4 points out of 300 points, and the incumbent's technical proposal received an average of 279.8 points. The technical panel was concerned about Maxima's lack of understanding of the ERIC system, its lack of detail regarding ERIC's systems and procedures, and its plan to automate the ERIC system primarily through the use of a local area network system (LANS). In contrast, the panel found that the ORI proposal was extremely detailed and demonstrated a thorough understanding of the ERIC facility and its role within the total ERIC system. The panel found both proposals to be technically acceptable and recommended they be included in the competitive range. This recommendation was adopted by the contracting officer.

The panel prepared a list of technical questions relating to each offeror's proposal. On September 27, 1988, the contracting officer sent Maxima a list of 13 technical questions and ORI a list of 7 technical questions to answer. Both offerors submitted timely responses, and the technical panel reconvened to evaluate these responses. As a result, Maxima's average technical score was reduced 17 points to 241 points out of 300, and the panel members changed their assessment of Maxima's proposal to unacceptable but capable of being made acceptable. Maxima's technical score was lowered because of its continued lack of specificity as to how certain functions would be performed, and its insufficient justification for its heavy reliance on automation. ORI's average technical score was increased 4 points to 283.7 points and again was rated technically acceptable.

On October 28, oral discussions were conducted with both offerors relating to deficiencies in their technical and cost proposals. At the conclusion of these discussions, the offerors were provided with a list of questions raised during discussions to respond to in writing. Maxima was requested to answer nine technical questions and ORI three technical questions. The offerors were notified that responses to these questions would constitute their best and final offers (BAFOs).

The technical panel reviewed Maxima's BAFO, and its average technical score increased 9 points to 250 points. Although the majority of the evaluators rated Maxima's BAFO as technically acceptable, the panel members were still concerned that Maxima's technical approach relied too heavily on the LANS technology without adequately addressing the interface between technology and personnel in the ERIC system. Another weakness with Maxima's BAFO was the unknown effects that implementation of a LANS would have on the ERIC system and, in particular, ERIC's ability to maintain processing and production schedules. Finally, the panel was concerned with Maxima's continued lack of detail relating to ERIC's systems, procedures, and products. In comparison, ORI's BAFO was rated technically acceptable by all panel members, and its average technical score increased 6 points to 289.3 points.

With regard to cost, ORI's proposed costs (\$4,224,934 over the 5-year life of the contract) were \$356,185 higher than Maxima's. The major difference between the two proposals was in labor costs. Education attributed ORI's higher labor costs to its proposed use of a highly qualified and experienced core of personnel familiar with the ERIC system. Based on his determination that ORI's superior technical

proposal was worth its higher cost, the contracting officer awarded the contract to ORI.

Maxima first alleges that Education did not conduct meaningful discussions with it. In Maxima's view, Education improperly encouraged Maxima to pursue its highly automated technical approach without revealing that it in fact substantially preferred ORI's less automated approach. We find the protester's allegations to be without merit.

In order for discussions to be meaningful, contracting agencies must furnish information to all offerors in the competitive range as to areas in which their proposals are believed to be deficient so that offerors may have an opportunity to revise their proposals to fully satisfy the agency's requirements. See Federal Acquisition Regulation (FAR) § 15.610(c); Proprietary Software Systems, B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and we will only review an agency's judgments to determine if they are reasonable. See Northwest Regional Educational Laboratory, B-222591.3, Jan. 21, 1987, 87-1 CPD ¶ 74.

Here, the record shows that on September 27, Education sent Maxima a list of 13 technical questions relating to its initial proposal. Several of these questions raised issues concerning Maxima's automated technical approach. For example, the protester was asked to provide information as to which ERIC system components would become a part of the LANS, which tasks would be affected by the LANS, and how personnel would be trained under the automated procedures. On October 28, Education orally discussed with Maxima and provided in writing to the protester a list of nine additional technical questions. In particular, the protester was asked to:

"Provide additional justification that the proposed Local Area Network (LAN) is both needed and is cost effective for carrying out the functions discussed in the technical proposal and responses to clarification questions, viz. for duplicate checking, document control, administration, reference work and lexicography."

We think the questions posed by Education during discussions with Maxima--twice in writing and once during oral discussions--were sufficient to alert Maxima that Education was concerned about its automated approach. The questions clearly reflect concerns about the impact of the proposed

LANs on the overall system as well as on personnel; those questions, along with the request that Maxima provide "additional justification" for the need for a LANs and the costs associated with it, should have placed Maxima on notice that the agency had serious reservations about Maxima's proposed approach. This satisfied Education's obligation to conduct meaningful discussions with the protester in this area.

Maxima also alleges that Education failed to obtain full and open competition in this procurement since only two proposals were received. The protester further contends that no offeror could be evaluated fairly against the awardee, who has been the incumbent contractor for 17 years. Education responds that it conducted the procurement in accordance with the statutory and regulatory requirements for full and open competition, and that it in no way improperly favored the awardee. We agree.

An agency meets the requirements in the Competition in Contracting Act of 1984 (CICA) for full and open competition when it makes a diligent, good faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of solicitation materials, and obtains a reasonable price. See A&C Building and Industrial Maintenance Corp., B-230839, July 21, 1988, 88-2 CPD ¶ 67. Whether an agency's efforts in this regard are sufficient in light of the applicable statutory and regulatory requirements depends upon the facts and circumstances of each case. Id. We find that Education met the CICA requirements for full and open competition regarding notice of the requirement since Education published the requirement in the CBD, posted the requirement on an agency bulletin board, and discussed the requirement among diverse groups who are interested in ERIC. As a result of its efforts, Education received 175 requests for the RFP. Moreover, there is no indication, and Maxima does not contend, that the cost at which the contract was awarded was unreasonable. As a result, we find no basis to question Education's efforts to obtain full and open competition.

Maxima also asserts that the awardee has a competitive advantage over other contractors since it has been the incumbent contractor at the ERIC facility for over 17 years, and, therefore, no offeror could be evaluated fairly against ORI. This argument is without merit. Contracting agencies are not required to equalize a competitive advantage enjoyed by an offeror unless that advantage results from preferential treatment or other unfair action by the

government. Diagnostic Equipment Services, B-228050.2,
Dec. 3, 1987, 87-2 CPD ¶ 541. Here, there is no indication
that Education engaged in any preferential treatment
relating to the awardee in either past procurements of the
ERIC facility or this procurement, and Education had no duty
to equalize any competitive advantage enjoyed by ORI as a
result of its experience as the incumbent contractor. Id.

The protest is denied.


James F. Hinchman
General Counsel